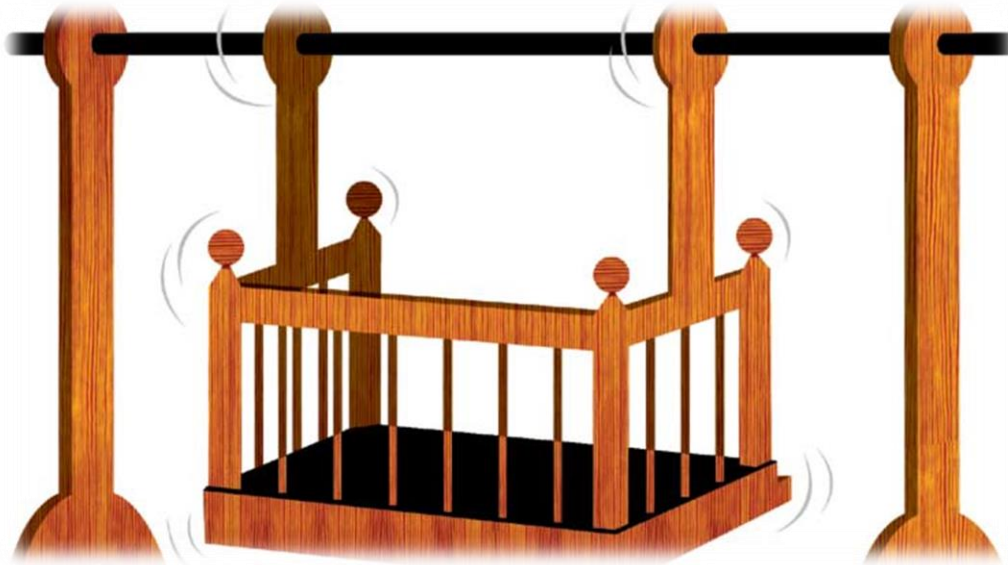




Role of Courts in Adoption Matters



Central Adoption Resource Authority

**Ministry of Women & Child Development
Government of India**





Why Adoption Matters for Childrens without Family?



- "The nation's children are a supremely important asset.
- Their nurture and solicitude are our responsibility.
- Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society.
- Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice."
- *(National Policy for Children, 1974, carried forward in the Preamble of National Policy for Children, 2013)*





What is Adoption?



- Relationship of the child is severed legally from his/her biological parents
- Child becomes the lawful child of his/her adoptive parents
- All the rights, privileges and responsibilities post adoption are similar to that in case of a biological child.

(Sec 2(2) of JJ Act, 2015 & Sec 12 of HAMA, 1956)





Adoption Legislations



- Hindu Adoption Maintenance Act, 1956 (HAMA)
- Juvenile Justice (Care & Protection of Children) Act, 2015 (JJ Act)
- ✓ Model JJ Rules, 2016
- ✓ Adoption Regulations 2017

REGISTERED No. D. 221

The Gazette of India

 EXTRAORDINARY
 PART II—Section 1
 PUBLISHED BY AUTHORITY

No. 73] NEW DELHI, SATURDAY, DECEMBER 22, 1956

MINISTRY OF LAW

New Delhi, the 21st December, 1956

The following Act of Parliament received the assent of the President on the 21st December, 1956, and is hereby published for general information:—

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

No. 78 of 1956

[21st December, 1956]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.

Enacted by Parliament in the Seventh Year of the Republic of India as follows:—

CHAPTER I

सं. ७३—(११०४/०००७/२००५)—१६

REGISTERED NO. DL—(N104/9807/2005)—16


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असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्रधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. ७३] नई दिल्ली, शुक्रवार, जनवरी 1, 2016/पौष 11, 1937 (सक)
 No. 73] NEW DELHI, FRIDAY, JANUARY 1, 2016/PAUSHA 11, 1937 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 1st January, 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December, 2015, and is hereby published for general information:—

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

No. 2 of 2016

[31st December, 2015]



Towards a new dawn



Hindu Adoption Maintenance Act, 1956 (HAMA)



- Not a secular Act as the child, the giver and the taker to be a Hindu (a Muslim, Christian, Parsee, Jews, any member of a scheduled tribe governed by their customary law can not adopt) (Sec 2 of HAMA)

- Eligibility of adoptive parents (Sec 6 to 8 of HAMA)
 - ✓ Only a Hindu, Buddhist, Jain, or Sikh husband above the age of 18 can adopt under this act only with the consent of his living wife (Husband is the adopter and wife is merely consenter)
 - ✓ A single female (unmarried, divorcee or widow) can also adopt (Sec 8 (c))
 - ✓ A person having a male child can not adopt a male child
 - ✓ A person having a girl child can not adopt a girl child
 - ✓ Age difference between the adoptive father and the adoptive girl child to be at least 21 years (Sec 11 (iii))

- The child has to be below 15 years of age (Sec 10(iv) of HAMA)

- Provision of payment or reward and any contravention shall be punishable (Sec 17 of HAMA)



Role of Court in Adoption under HAMA



- Courts permission to adopt under this act is required only in the following cases (Sec 9(4) of HAMA):
 - ✓ where both the father and mother are dead
 - ✓ where both the father and mother have completely and finally renounced the world
 - ✓ where both the father and mother have abandoned the child
 - ✓ where both the father and mother have been declared to be of unsound mind by the court concern
 - ✓ where the parentage of the child is not known
- Adoption through merely a registered Adoption deed (Sec 16 of HAMA)- Implications
- Judicial Precautions required by the Court concerned in a Declaratory Suit validating an adoption done through merely adoption deed?
- Whether irrevocability of a Valid Adoption (Sec 15 of HAMA)- Whether sacrosanct? If so, how to ensure best interest of the child in case of disruption? If not, how to divest the child from the irrevocability for re-adoption under J.J. Act 2015 (wherever desirable)?





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Abbreviations



- **JJ Act:** Juvenile Justice (Care and Protection of Children) Act, 2015 (replaced JJ Act, 2000 w.e.f. **15.01.2016**)
- **JJ Rule: Juvenile Justice** (Care and Protection of Children) Model Rules, 2016 (replaced JJ Model Rules, 2007 w.e.f. **21.09.2016**)
- **AR 2017:** Adoption Regulations, 2017 (replaced 2015 Adoption Guidelines w.e.f. **16.01.2017**)
- **CARINGS:** Child Adoption Resource Information & Guidance System
- **PAPs:** Prospective Adoptive Parents
- **HSR:** Home Study Report
- **CSR:** Child Study Report
- **MER:** Medical Examination Report
- **CARA:** Central Adoption Resource Authority
- **SARA:** State Adoption Resource Agency
- **SAA:** Specialized Adoption Agency
- **CCI:** Child Care Institutions
- **AFAA:** Authorised Foreign Adoption Agency
- **CWC:** Child Welfare Committee
- **DCPU:** District Child Production Unit
- **LFA:** Legally Free for Adoption Certificate from CWC
- **NOC:** No Objection Certificate
- **CPC:** Code of Civil Procedure
- **MCA:** Miscellaneous Civil Applications
- **MJC:** Miscellaneous Judicial Case



Towards a new dawn



Juvenile Justice Act, 2015 (JJ Act)



- A secular Act - any body irrespective of religion can adopt a child under this Act (Sec 58(1) of the JJ Act)
- Nothing in this Act shall apply to adoption under HAMA (Sec 56(3) of the JJ Act)
- All Inter-country adoptions shall be done as per provisions of this Act & Adoption Regulations framed by the Authority (Sec 56(4) of the JJ Act)
- Children up to the age of 18 can be adopted under this Act (Sec 2(12) of the JJ Act)
- Orphan, Abandoned & Surrendered (OAS) children declared legally free for adoption by CWC (Sec 38 of JJ Act & Reg 6, 7 of AR 2017) can be placed in In-country and Inter-country adoptions (Sec 56(1) of the JJ Act, Reg 4 (a) of AR 2017)
- Children of relatives, as defined in Sec 2(52) of the JJ Act, can be adopted by a In-country parent (Sec 56(2) of the JJ Act & Reg 51 of AR 2017)
- Children of relatives, as defined in Sec 2(52) of the JJ Act, can be adopted by a Inter-country parent (Sec 60 of the JJ Act & Reg 53, 54 of AR 2017)

Contd.





Juvenile Justice Act, 2015 (JJ Act)



- Eligibility of PAPs (Sec 57 of the JJ Act & Reg 5 of AR 2017)
 - ✓ A couple/single parent can adopt
 - ✓ Single male not eligible to adopt a girl child
 - ✓ PAPs age eligibility criteria is defined
 - ✓ Minimum 2 years stable martial relationship is mandatory
 - ✓ PAPs with 3 or more children shall not be eligible to adopt a normal OAS child
 - ✓ Eligibility and suitability of the PAPs are ascertain through a Home Study by the SAA (Sec 58(2) of the JJ Act & Reg 9(13) of AR 2017)
- Judicial Determination of Adoption by Court concerned defined in (Sec 61 of the JJ Act & 12, 17, 55 of AR 2017)
- Judicial Procedure for Court in Adoption Case defined in JJ Rules, 2016 (Rule 45(2), Reg 17(2) of AR 2017)
- Post adoption follow up of the adoptive family both in case of In-country and Inter-country is undertaken for 2 years by the SAA and the ACAA respectively (Reg 13 & 19 of AR 2017 respectively)



Comparative Statement on Adoption Under HAMA & JJ Act



HAMA	JJ ACT
Only for Hindus	Secular Act
Same sex children can not be adopted	No such conditions
Children only upto 15 years of age can be adopted	Children upto 18 years of age can be adopted
Registered deed finalizes adoption, court permission required in some cases	Adoption order finalizes adoption, deed is not required
OAS children qualifying the conditions under Sec 9(4) of the Act can be given in Adoption by one Hindu to another Hindu (not necessarily relative to each other) with the permission of District Court. However, such children can not be given in adoption by a SAA/CCI under HAMA, since such children belong to the State & neither the child nor the Institution can be considered as Hindu. Such application should not be entertained by the courts	JJ Act provisions for rehabilitation of OAS children in the SAA/CCI and these children have to be placed in adoption under this Act Orphan/Abandoned/Surrendered Children are Children in Need of Care & Protection as per Sec 2(14) (vi) of JJ Act and therefore have to be given in Adoption under JJ Act.
Suitability of the PAPs, sourcing of the child and the post-adoption follow up can not be ascertained/ensured for adoption under HAMA	Welfare & Best Interests of the Child is ensured through the built in mechanisms in the JJ Act, JJ Rules and Adoption Regulations



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Adoptions under JJ Act 2015 & Adoption Regulations 2017



Juvenile Justice



Towards a new dawn



Fundamental Principles Governing Adoption



- Adoption shall be resorted to right to family for the OAS children (Sec 56(1) of JJ Act)
- The child's best interests shall be paramount (Reg 3(a) of AR, 2017)
- The principle of placement of the child is in his own socio-cultural environment (Reg 3(b) of AR, 2017)
- All adoptions shall be registered on CARINGS (Reg 3(c) of AR, 2017)
- Maintaining the confidentiality is mandatory (Sec 74 of JJ Act & Reg 3(c) of AR, 2017)





Process for Declaring a Child Legally Free for Adoption



OAS children produced before CWC within 24 hours

(Sec 31 of the JJ Act & Reg 6 & 7 of AR 2017)

Placed in CCI/SAA for immediate care through a written order

(Sec 36 (1) of the JJ Act & Reg 6 & 7 of AR 2017)

Procedure for declaring legally free undertaken by DCPU & SAA

(Sec 35 & 36 (2) & (3), 38 (1) to (3) of the JJ Act; Rule 19 of JJ Rules & Reg 6 & 7 of AR 2017)

Declared legally free by CWC following due procedure

(Sec 38 (1) of the JJ Act & Reg 6 & 7 of AR 2017)





Process for Declaring Orphan/Abandoned Children Legally Free for Adoption



- To be produced before CWC within 24 hours along with the report about the facts and circumstances in which the child found (**Sec 31 of JJ Act & Reg 6(2) of AR 2017**)
- A copy of the above report as per **Form 17 of JJ Model Rules, 2016** to be submitted to the local Police station within 24 hours
- Interim care order by CWC to a SAA or CCI to keep the child pending inquiry (**Sec 36(1), 37(1) of JJ Act & Reg 6(4) of AR 2017**)
- Photo publication of the child by DCPU in newspaper within 3 working days to trace out the biological parents/legal claimant (**Reg 6(6) of AR 2017**)
- Entering of the particulars of the child in the designated Portal for missing and found children by the SAA or CCI concerned (**Sec 32(2) of JJ Act & Reg 6(6) of AR 2017**)

Contd.





Process for Declaring Orphan/Abandoned Children Legally Free for Adoption



- Social investigation completed within 15 days and the report be provided to the CWC by the SAA/CCI and DCPU within 30 days to enable the CWC to pass the final order within 4 months of first production of the child (**Sec 36(1)(2), 38 of JJ Act & Reg 6(10)(14) of AR 2017**)
- CWC to declare the child legally free for adoption, if biological parent/legal guardian could not be traced out within a period of 2/4 months in case of a child younger/older than 2 years respectively from the date of production of child (**comments under Sec 38 of JJ Act & Reg 6(13) of AR 2017**)
- Non receipt of Police report within stipulated time frame of 2/4 months in case of a child younger/older than 2 years respectively shall be deemed to have been given (**Reg 6(11) of AR 2017**)

Contd.





Process for Declaring Orphan/Abandoned Children Legally Free for Adoption



- 3 members of the CWC to sign the order declaring the child legally free for adoption (**Sec 38(4) of the JJ Act & Reg 7(17) of AR 2017**)
- Siblings or twins to be declared legally free in a single order by CWC (**Reg 6(19) of AR 2017**)
- The certificate of CWC declaring the child legally free for adoption to be uploaded by the SAA (within 48 hours from the receipt of such certificate (**Reg 29 (d) of AR 2017**)) on CARINGS, the child is referred to the registered and eligible PAPs thereafter, based upon their preference & seniority.





Process for Declaring Surrendered Children Legally Free for Adoption



- Parent or guardian wanting to relinquish a child due to physical, emotional and social factors beyond their control shall produce the child before CWC for surrendering the child (Sec 5(1) of JJ Act & Reg 7(1) of AR 2017)
- After due counselling, the child can be surrendered 'in camera' (Reg 7(22) of AR 2017) and a surrender deed (as per Schedule V of AR 2017) shall be executed by the parent or guardian before the CWC (Sec 35(2) of JJ Act and Reg 7(2) to 7(9) of AR 2017)
- Two months reconsideration period is available to the parents or guardian surrendering the child from the date of surrender (Sec 35(3) of JJ Act, Reg 7(12) of AR 2017)
- No public notice or advertisement shall be issued in case of surrendered child and due regard to be given to privacy of surrendering parents (Reg 7(13)(14)(20) of AR 2017)
- CWC shall issue an order declaring the child legally free for adoption after the expiry of 60 days from the date of surrender as per schedule 1 of AR 2017 (Reg 7(17) of AR 2017)





Assessing Eligibility of PAPs for Adoptions



- Home study to check the suitability and eligibility of the PAPs is conducted by the social worker of a SAA in the place of PAPs' residence (Reg 9(7)(8) of AR 2017)
- Home Study Report (HSR) is prepared by Social Worker in the format given in Schedule VII of AR 2017 which has a validity of 3 years (Reg 9(10) to (12) of AR 2017)
- PAPs are declared suitable based on the HSR and only then they are eligible for adopting a child depending upon the availability of a suitable child (Reg 9(13)(17) of AR 2017)

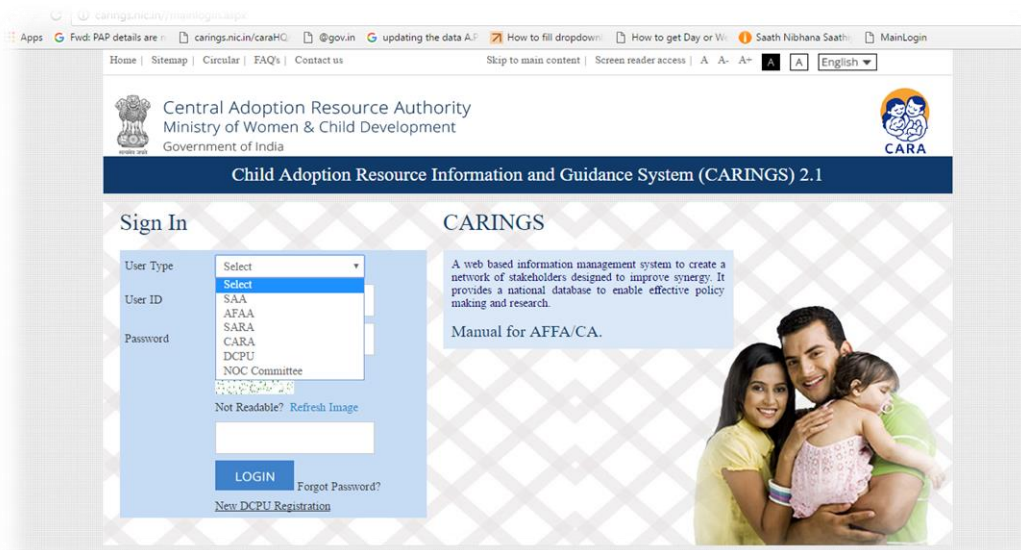




Child Adoption Resource Information & Guidance System (CARINGS)



- Online Application to facilitate, guide and monitor adoption programmes.
- It has two databases: one for the children filled by the SAAs and the other is for the PAPs filled by the domestic PAPs or the AFAAs for the NRIs/OCIs/foreign PAPs
- It has secure role based access for various stakeholders



Key implementing Stakeholders are:-

- Prospective Adoptive Parents (PAPs) both within the country and abroad.
- Specialized Adoption Agencies (SAAs).
- Child Care Institutions (CCIs).
- State Govt. and State Adoption Resource Agencies (SARAs).
- District Child Protection Units (DCPUs) registered with CARA.
- Authorized Foreign Adoption Agencies (AFAAs) and Central Authorities (CAs) in the receiving countries.





Types of Adoptions Under JJ Act 2015 & AR 2017



- In-country Adoption of OAS Children
- Inter-country Adoption of OAS Children
- In-country Relative Adoption
- Inter-country Relative Adoption
- Adoption by Step Parents





In-country Adoption of OAS Children



PAPs register on line for adopting a child and upload their documents in CARINGS

Home study conducted by a social worker of SAA and uploaded on CARINGS

PAPs based on choice and eligibility are referred profile of legally free children

PAPs reserve a child within 48 hours

Matching of the PAP's with the child is done by Adoption committee within 20 days

Acceptance of the child by the PAPs and taking the child in Pre-Adoption Foster care

OAS children produced before CWC

Placed in CCI/SAA for immediate care

Procedure for declaring legally free undertaken by DCPU

Declared legally free by CWC

Application & Issuance of the birth certificate of the child with 8 working days

Court order by disposing off the case within 60 days of the filing after in camera hearing by the designated court

Filing of petition by SAA with PAPs as co-petitioner in designated court within 10 days of acceptance

Post Adoption Follow up till 2 years from the date of placement with the adoptive family





Inter-country Adoption of OAS Children



Counselling and preparation of HSR of PAPs by the Social worker of AFAA or CA for Hague Signatory Countries and Indian Mission for others

Registration of PAPs in CARINGS by AFAA/CA/Indian Mission

Uploading of Documents by AFAA/CA/Indian Mission

Initial approval by CARA

Child Referral and Reservation through CARINGS

Child Acceptance by PAPs

NOC by CARA

Pre-Adoption Foster Care (only in few cases)

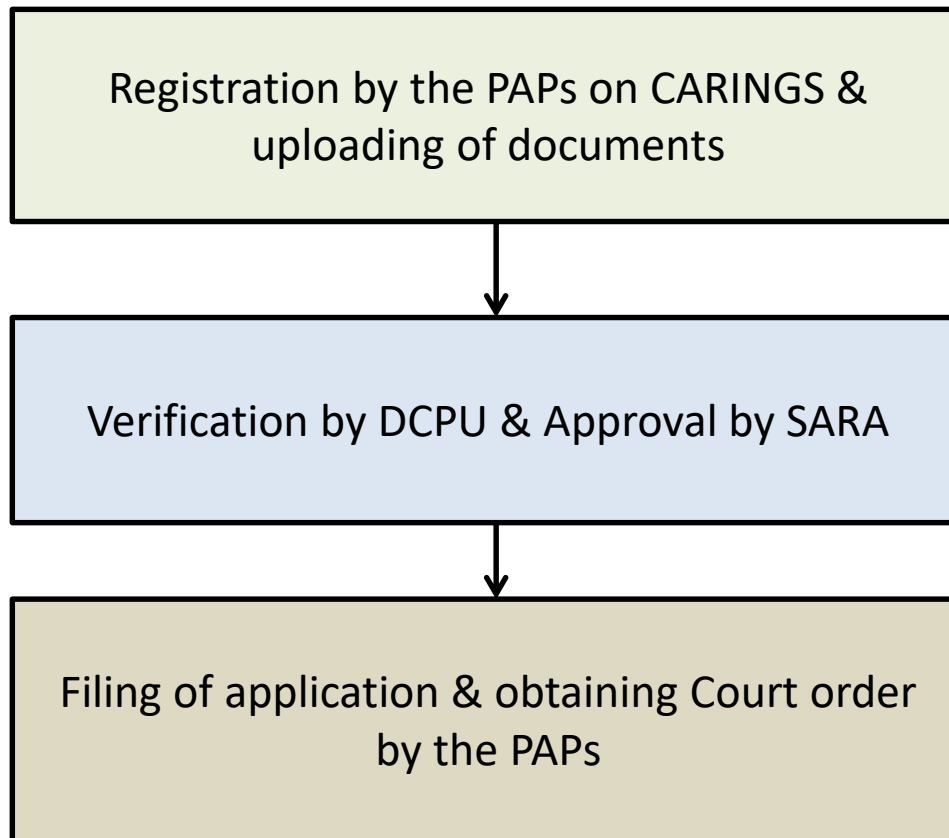
Court Order, Conformity Certificate, Passport & Exit Visa for the child

Child Arrival, Citizenship, Post- Adoption Follow-up till 2 years



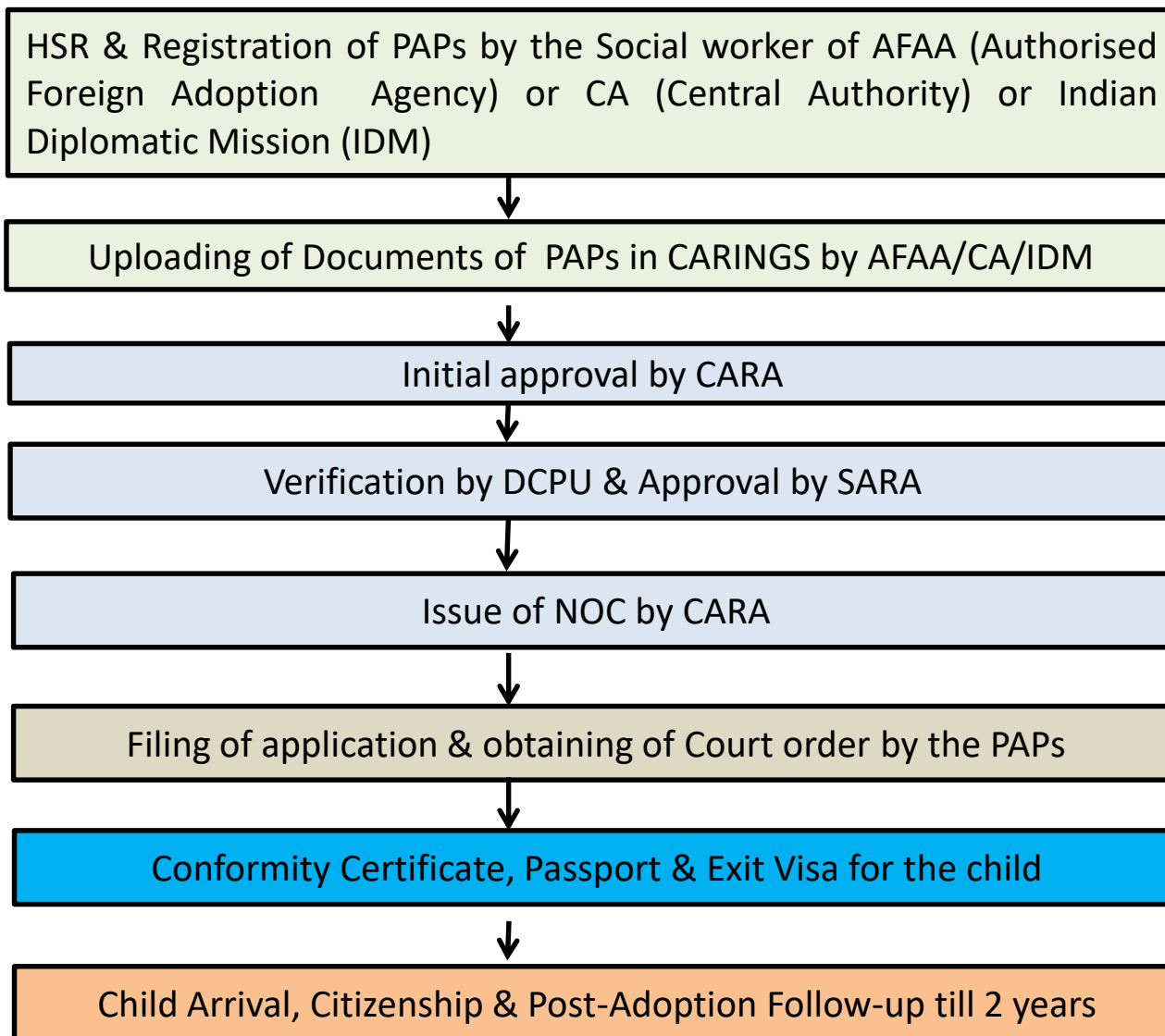


In-Country Relative Adoption





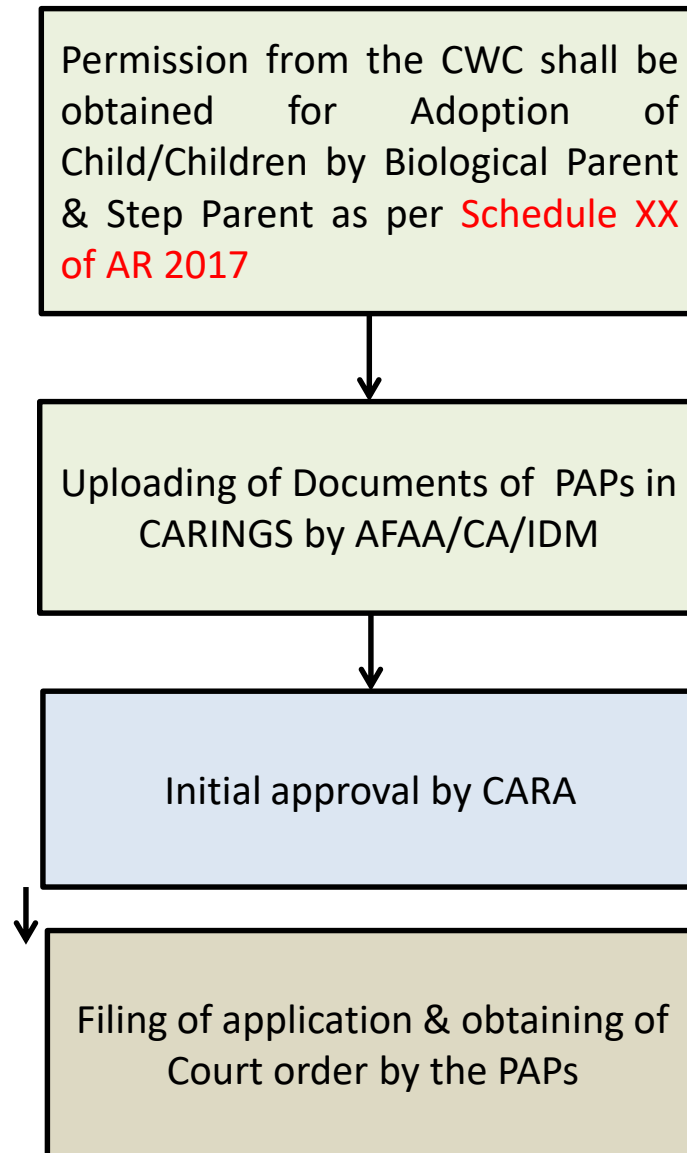
Inter-Country Relative Adoption





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Adoption By Step-Parent



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Post Adoption Follow Up of In-country Adopted Children



- Post Adoption follow up for In-country adoptions is conducted for two years on 6 monthly basis from the date of pre adoption foster placement of the child with the PAPs and report uploaded in CARINGS as per **Schedule XII of AR 2017 (Reg 13(1) of AR 2017)**
- In case of adjustment problem or disruption the process to be undertaken is specified in **Reg 13(5)(6) of AR 2017**
- In case of dissolution the application for annulment of adoption order shall be filed in the court which issues the adoption order **(Reg 13(7) of AR 2017)**



Post Adoption Follow Up of Inter-country Adopted Children



- Post Adoption follow up for Inter-country adoptions is conducted for two years, on quarterly basis in the first year followed by bi-annually in the second year, by the AFAA and report is uploaded in CARINGS as per **Schedule XII of AR 2017 (Reg 19(1)(7) of AR 2017)**
- In case of adjustment problem or disruption or dissolution, the child is entitled to receive, care, protection and rehabilitation through the child protection services of the receiving country as per the Hague Convention **(Reg 19(2) to (5) of AR 2017)**
- The AFAA or CA or Govt Dept concern may organize Annual get together to be facilitated by Indian Diplomatic Missions **(Reg 19(6) of AR 2017)**





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Court Procedure



Legal Custody
of Child



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Court Procedure



- Adoption gets concluded legally after obtaining an adoption order from the court concerned
- Court means civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court or City Civil court (**Section 2 (23) of the JJ Act**)
- Court Procedure is defined in **Sec 61 of JJ Act & Regulations 12, 17, 55 of the Adoption Regulations**
- Procedure before the Court shall not be bound by the procedure laid down in the CPC, 1908 (**Rule 45 of the JJ Rule**)
- The application for Adoption Order is non adversarial in nature, the SAA and the PAPs are co-applicant and there shall not be any opposite party or respondent (**Reg 12(5) of AR 2017**)
- Five different model applications for different types of Adoptions are provided in **Schedules XXVIII to XXXII of AR 2017**
- List of documents to be attached for different types of Adoptions applications have been enumerated at **Schedules VI & IX of AR 2017**
- In case the PAPs are habitually residing abroad, they may permit the Social worker of the SAA to represent them through a Power of Attorney (**Reg 17(2) of AR 2017**)

Contd.





Court Procedure



- SAA shall file the application in the Court within 10 working days after matching (Reg 12(1) of AR 2017)
- In case Child is from a CCI linked to the SAA, the CCI also becomes co-applicants along with the PAPs (Reg 12(3) of AR 2017)
- A single petition is filed for twins or siblings (Reg 12(4) of AR 2017)
- All court proceedings to be held in camera and disposed within 2 months of date of filing (Sec 61 (2) of the JJ Act & Reg 12 (6) of AR 2017)
- Adoption Order should not stipulate execution of bond or making investment by the PAPs in the name of the child (Reg 12(7) of AR 2017)
- Registration of Adoption deed shall not be mandatory as per the Act (Reg 12(9) of AR 2017)
- Petition filed by PAPs to adopt a child of a relative, should carry the consent letter of biological parents or permission of CWC as per Schedule XIX or Schedule XXII of AR 2017 respectively (Reg 51(2) & 55(1) of AR 2017)
- In case of Inter-country Relative Adoption, the PAPs shall file an application in the District where the child resides (Reg 55(3) of AR 2017)
- Before issuing the court order the court shall satisfy itself as mandated under Section 61(1) of the JJ Act



Section 61 of the JJ Act



- Before issuing an adoption order, the court shall satisfy itself that:-
 - ✓ That the adoption is for the welfare of the child.
 - ✓ That due consideration has been given to the wishes of the child having regard to the age and understanding of the child.
 - ✓ That neither the PAPs have given and agreed to give nor the agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority (CARA) towards the adoption fees or service charges or child care corpus.

- The adoption proceedings shall be held *in camera* and the case shall be disposed off by the court within a period of two months from the date of filing.



Comments on Section 61 (1) of the JJ Act



- Welfare of the child (Sec 61(1)(a) of the JJ Act) can be ascertained from the CWC order declaring the child legally free for adoption, HSR recommending the eligibility of the PAPs and minutes of the Adoption Committee matching the PAPs with the child. Further post-adoption follow up is already built in the procedure.
- Wishes of the child (Sec 61 (1)(b) of the JJ Act) can be ascertained from the consent of the older child i.e. above five years of age (Ser No 1(16), 2(15) of Schedule IX & Ser No 3(2), 4(2), 5(2) of Schedule VI of AR 2017). Further, it may be ascertained during the In camera hearing by the Judge.
- No payment or reward has been made in consideration for the adoption, other than the fees or child care corpus as stipulated in the Adoption Regulation (Sec 61(1)(c) of the JJ Act) can be ascertained from the fact that the adoption process has been undertaken by PAPs duly registered in CARINGS and hence would not be paying any money other than the stipulated fees.
- There is no requirement of Scrutiny Committee as the application gets filed in the court only after the entire process has been scrutinized by the respective agencies mandated to do so and relevant documents are attached with the application.
- In-camera hearing and disposal within a period of two months (Sec 61(2) of the JJ Act) must be ensured in the welfare of the children



Summary of the Provisions of the JJ Act



- Adoption to be resorted to as per the provisions of the Act , the Rules and the Adoption Regulations framed by CARA , to ensure right to family for O/A/S children **[Section 56 (1)]**
- A Non-Hindu living in India can adopt under JJ Act **[Section 56 (2)]**
- Nothing in JJ Act shall apply to the adoption of children made under the provisions of HAMA **[Section 56 (3)]**
- All inter-country adoption to be done as per the provisions of JJ Act and the Adoption Regulations framed by CARA **[Section 56 (4)]**
- Eligibility of prospective adoptive parents laid down under **Section 57**
- Procedure for adoption by Indian prospective adoptive parents living in India laid down under **Section 58**
- Procedure for inter-country adoption of an orphan or abandoned or surrendered child India laid down under **Section 59**
- Procedure for Inter-country relative adoption laid down under **Section 60**
- Court procedure for adoption laid down under **Section 61**
- Effect of adoption has been laid down under **Section 63** of the Act.
- The documentation and other procedural requirements, not expressly provided in this Act with regard to the adoption of an OAS child by resident Indian PAPs or by NRI, or by OCI or by a foreigner, shall be as per the Adoption Regulations.



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Order Sought By Applicants



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Order Sought By Applicants



- Adoption of the Child granted to the adoptive parents and they be declared parent of the child for all purpose of the law.
- The new name as given by the adoptive parents must be recorded along with the date of birth of the child.
- Direction must be given to the Birth Certificate issuing authority (name & place) to issue Birth Certificate within five working days from the date of receipt of application, with the child's name (as requested by the adoptive parents in the application), the date of birth, adoptive parents (names) as parents and the place of the SAA as place of birth (only the place).





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Many things can wait. Children cannot. Today their bones are being formed, their blood is being made, their senses are being developed. To them we cannot say "tomorrow." Their name is today.

— Gabriela Mistral —

AZ QUOTES



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